

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

G. Paul Bollwerk, III, Chairman
Dr. Richard F. Cole
Dr. Craig M. White

In the Matter of

STRATA ENERGY, INC.

(Ross In Situ Recovery Uranium Project)

Docket No. 40-9091-MLA

ASLBP No. 12-915-01-MLA-BD01

July 25, 2014

MEMORANDUM AND ORDER
(Providing Administrative Directives Associated
with Evidentiary Hearing and Limited Appearance Session)

Under the current general schedule for this proceeding, the Licensing Board is scheduled to conduct an evidentiary hearing between September 30-October 3, 2014, in the Wyoming Meeting Room in Energy Hall at the Cam-Plex Multi-Event Facilities, 1635 Reata Dr., Gillette, Wyoming, regarding Joint Intervenors¹ admitted environmental contentions 1,² 2, and 3.

¹ Joint Intervenors are the Natural Resources Defense Council and the Powder River Basin Resource Council.

² Whether environmental contention 1 is a subject of this hearing depends on the outcome of a pending party dispositive motion. See [Joint Intervenors'] Motion for Summary Disposition on Environmental Contention 1 (June 13, 2014). Although a fourth issue statement, environmental contention 4/5A, was admitted into this proceeding, in a ruling this date, the Board has dismissed that contention. See Licensing Board Memorandum and Order (Ruling on Summary Disposition Motion Regarding Environmental Contention 4/5A) (July 25, 2014) at 2 (unpublished).

In anticipation of the above-scheduled evidentiary hearing session,³ the Board provides the following administrative directives:

A. Prefiled Testimony, Exhibits, and Related Matters

1. Order and Manner of Presentation of Evidence

The Board anticipates that the contentions will be litigated in numerical order. Because of the uncertainties inherent in attempting to predict the time required for litigation, the parties should be prepared to have their respective witnesses available for the entirety of the September 30-October 2 period, unless they advise the Board on or before Friday, August 22, 2014, that there is some limitation on the availability of a particular witness.⁴ In addition, the parties should plan for the possibility that one or more hearing sessions might extend into the evening if such an extension would facilitate completing any portion of the evidentiary session.⁵

As to the order of party presentations, while the Board recognizes that the admitted contentions all raise issues associated with the NRC staff's supplement to the agency's generic environmental impact statement on in situ recovery facilities, as the party with the ultimate burden of proof under 10 C.F.R. § 2.325 relative to issuance of the requested 10 C.F.R. Part 40

³ Based on the information provided by the parties to this point, the Board anticipates that the entire hearing on these contested matters will be open to the public in that none of the testimony or exhibits being utilized will contain information that is proprietary or otherwise not subject to public release pursuant to 10 C.F.R. § 2.390.

⁴ The parties are reminded of their continuing responsibility under 10 C.F.R. § 2.336(a)(1) to identify timely "any person, including any expert, upon whose option the party bases its claims and contention and may rely upon as a witness," along with a copy of the analysis or authority that person bases his or her opinion.

⁵ The Board also advises the parties that in the event new fiscal year funding problems, such as occurred in October 2013, should cause the Board to have to cancel the hearing sessions in Wyoming, based on the information that was previously provided to the Board regarding the availability of an SEI witness, it would anticipate convening the hearing in the Licensing Board Panel's Rockville, Maryland hearing room on Tuesday, October 28, 2014. See Licensing Board Memorandum and Order (Regarding General Schedule and Site Visits/Limited Appearance Session/Evidentiary Hearing) (May 9, 2014) at 2 n.2 (unpublished).

license, applicant Strata Energy, Inc., (SEI) will present its witnesses and evidence for Board questioning first, followed by the staff, followed by Joint Intervenors.

2. Schedule for Party Filings

Party prefiled testimony, supporting evidentiary materials,⁶ and proposed Board cross-examination questions shall be filed in accordance with the schedule set forth in the Board's June 2, 2014 memorandum and order. See Licensing Board Memorandum and Order (Granting Requests to Revise Dispositive Motion Briefing Schedule; Revised General Schedule) (June 2, 2014) attach. A, at 2 (unpublished) [hereinafter Revised General Schedule]. Further, the Board encourages the parties to attempt to arrive at stipulations regarding factual information and/or the authenticity and admissibility of pre-filed evidentiary materials. Stipulations regarding factual information should be filed at the same time as the parties' initial prefiled testimony, while the authenticity and admissibility of evidentiary materials (including prefiled direct and rebuttal testimony) will be presumed to be agreed to by all the parties (and any objection to the evidentiary materials authenticity and/or admissibility will be deemed waived) absent a filing submitted within seven days of the submission of the prefiled evidentiary materials designating (a) which specific portions of any pre-filed materials will be the subject of an authenticity and/or admissibility objection at the evidentiary hearing; and (b) providing a brief synopsis of the legal/factual basis for the objection.

⁶ In the context of this 10 C.F.R. Part 2, Subpart L proceeding, the Board generally does not anticipate accepting into evidence any documentary material that is not discussed or cited in support of a party's prefiled direct or rebuttal testimony. Citations in witness testimony to documentary material (other than citations to legal authorities, including statutes, regulations, and NRC Issuances), including information referenced as a hyperlink, a hypertext markup language (HTML) document, or a hyperlinked portable document format (PDF) document, must be accompanied by a PDF evidentiary exhibit, submitted with its own exhibit number, that includes the relevant portions of the referenced supporting material.

3. Initial Written Statements of Position and Written Responses

In crafting their initial written statements of position in accord with 10 C.F.R. § 2.1207(a)(1), which should be in the nature of a trial brief that provides a road map of the party's case relative to each admitted contention, the parties should, at a minimum, provide the Board with a brief summary or outline of (a) the key points made in the testimony of each witness or witness panel proffered by the party; (b) any important legal issues in controversy; and (c) the relief and/or determinations sought from the Board. Written responses prepared pursuant to section 2.1207(a)(2) should, at a minimum, provide a brief summary or outline of (1) the key points made in the testimony of each rebuttal witness or witness panel proffered by the party in response to the direct testimony provided by the other parties, identifying the particular witness or witness panel to which the rebuttal testimony is directed; (2) the party's response to any important legal issues identified by the other parties in their initial written statements; and (3) the party's response to the relief and/or determinations sought from the Board by the other parties in their initial written statements.

4. Form of Evidentiary Materials

The Board intends to utilize electronic exhibit marking during this evidentiary hearing. As such, assuming that the witness testimony and supporting exhibits they submit are properly prefiled using the agency's E-Filing system,⁷ it should not be necessary for the parties to provide the Board or counsel for the other parties with any paper copies of their evidentiary

⁷ Recently, the agency's ADAMS records management system has begun to accept non-documentary material, such as audio or video files. If a party contemplates submitting such non-documentary material or any physical items (e.g., rock sample) as prefiled evidentiary material, it should contact the Board's law clerk Kathleen Schroeder (kathleen.schroeder@nrc.gov) at least 10 days before the filing date to discuss arrangements for the submission and service of that material.

materials (including their direct and rebuttal testimony⁸). Nonetheless, the Board requests that each party have available one numbered paper copy of each of its prefilled exhibits for use in the event there are any operational issues with the electronic exhibit marking system.

Additionally, while the format for a hearing under 10 C.F.R. Part 2, Subpart L, does not generally contemplate the provision of additional “rebuttal” evidentiary material during an evidentiary hearing, see supra note 6, if any of the parties has documentary material that it does not wish to provide in support of its direct or rebuttal pre-filed testimony but nonetheless contemplates might become relevant in the context of Board questioning of any of the witnesses, it should ensure that it has that “ad hoc” material available in the hearing room both electronically (in a PDF format that complies with the agency’s E-Filing guidance) and via hard copy with enough paper copies to provide to counsel for the other parties, the three Board members, and the Board’s law clerk. Additionally, a party seeking to submit such material should be prepared to file that material, properly marked as a prefilled exhibit, via the agency’s E-Filing system after, but on the same day as, the material is marked for identification by the Board.

5. Filing of Prefiled Exhibits

a. Duplicate Exhibits. Only one copy of each item of documentary material should be offered as evidence in this proceeding. For example, if SEI offers (and has admitted) a certain portion of a staff report regarding the Ross facility, the staff should not then offer into evidence the same portion of the report. Instead, the staff would rely on the document already proffered by SEI.

⁸ Consistent with the provisions of Subpart L, see 10 C.F.R. § 2.1207(b)(3), direct and rebuttal witness testimony should be submitted as a prefilled exhibit that is numbered in accordance with the guidance in section A.5.b infra.

To this end, the parties should consult with one another prior to the submission of their prefiled evidentiary materials and determine whether any of the prefiled exhibits a party intends to offer into evidence in support of its prefiled testimony would otherwise be duplicated by another party in the proceeding. In each instance this is found to be the case, the parties should determine, based on the order of party presentations, which party will first offer the exhibit into evidence. The other party intending to use that material as an exhibit should revise its evidentiary submissions to reference the initial submitting party's exhibit number.⁹ Additionally, the parties should follow this practice relative to any exhibits utilized for prefiled rebuttal testimony or any evidentiary material introduced in the first instance during the evidentiary hearing itself.

b. Exhibit Order and Numbering. To expedite electronic processing, for the contested proceeding each party should number their prefiled exhibits in a format that consists of a three-character party designation, followed by a three-character zero-filled number.¹⁰ The three-character designation to be used by each of the parties is as follows: Strata Energy, Inc. - SEI, NRC Staff - NRC, Joint Intervenors - JTI. Consequently, a typical number sequence for the staff's exhibits would be as follows:

⁹ When duplicate pre-filed party exhibits have been identified, the party that is recognized as the one that initially will offer the document must, if it subsequently decides not to offer the item, provide timely notice of its intent to all other parties who identified the item as a duplicate document or thereafter evidenced an intent to rely upon it in prefiled direct or rebuttal testimony.

¹⁰ In establishing this numbering protocol, the Board is assuming that none of the parties anticipates having more than 999 evidentiary hearing exhibits. If this is not the case, the Board should be informed in the filing permitted by section E infra.

NRC001

NRC002

* * * * *

NRC100

To the extent possible, the parties should order and number their prefilled exhibits in the sequence the parties plan to identify, and present testimony referring to, each exhibit.

c. Exhibit Number Location. The exhibit number should be placed in the upper right hand corner of the first page of the exhibit. A separate cover sheet should be used for an exhibit only if there is no space on the first page of the exhibit into which the number can be legibly placed.

d. Large File-Size Exhibits. If a party finds that it needs to break a document into several segments to ensure it does not exceed the agency's guidance on recommended file sizes for submissions, see NRC, Guidance for Electronic Submissions to the NRC 15–16 (rev. 6.1 May 27, 2011) available at <http://pbadupws.nrc.gov/docs/ML1303/ML13031A056.pdf>, each of the segments should be labeled by placing an alpha designation next to the number of the exhibit in a way that will reflect the relationship of that part to the other parts of the document. For example, if a staff exhibit that would otherwise have the number NRC001 were submitted in three parts because of file size, each portion would have a different exhibit number in the following sequence: NRC001A, NRC001B, and NRC001C.

e. Revised Exhibits. If a party needs to provide a revised version of a previously prefilled exhibit, the exhibit should be refiled with the designation “-R” placed after exhibit number, such that, for example, a revised version of staff exhibit NRC001 would be designated NRC001-R. If a second or subsequent revision is necessary, the exhibit should be refiled with a sequential number immediately after the letter “R,” e.g., NRC001-R2.

6. Exhibit List

At the time they submit the prefilled exhibits associated with their prefilled direct testimony, each party should provide Board law clerk Kathleen Schroeder (e-mail address: kathleen.schroeder@nrc.gov) and the NRC Office of the Secretary (SECY) (e-mail address: hearing.docket@nrc.gov) with an electronic copy (preferably in Word format) of their prefilled exhibit list. In addition, concurrent with the filing of any additional or revised evidentiary materials, each party should provide the Board's law clerk and SECY with an updated exhibit list.¹¹

In that regard, to the extent possible the parties should utilize the exhibit list template included as Attachment A to this issuance, which Ms. Schroeder can provide in Word format upon request. For each exhibit listing, the parties should provide the party exhibit number; the ADAMS accession number, to the extent an ADAMS accession number is available for the document (or portion of the document) that is being proffered; the witness/panel that is sponsoring the exhibit; and the description field (consistent with the guidance in section A.7 below). Also, for any exhibit having a confidential/sensitive status that would preclude public disclosure, the listing information should be set forth in **bold** type.¹² And again, in each instance when a party submits an additional/revised exhibit, the party also should provide Ms. Schroeder and SECY with a revised electronic copy of its prefilled exhibit list that reflects the change.

¹¹ Because the parties, having previously consulted regarding exhibit duplication, see section A.5.a supra, should be aware of the exhibits each is utilizing, the Board is not requiring that these exhibit lists be provided to the other parties. The parties nonetheless are free (and encouraged) to make such an exchange.

¹² As the Board noted previously, see supra note 2, none of parties has indicated up to this point that it intends to rely upon any nonpublic information in support of its case. If that is not the case, however, that party needs to inform the Board of such an eventuality promptly, including submitting a proposed protective order to which the other parties have agreed.

7. E-Filing Document Titles

With a change in the E-Filing system that the agency's Office of Information Services hopes to have implemented by the date the parties to this proceeding are scheduled to submit their prefilled direct testimony and supporting materials, the document title (which can be up to 200 characters in length) that is assigned by a party in submitting prefilled testimony or exhibits will become the title of that document in the agency's ADAMS document management system and the associated Electronic Hearing Docket. To ensure continuity and ease of identification, the document title assigned to any particular prefilled testimony/exhibit in an E-Filing submission and the description provided for that document in the exhibit list submitted in accordance with section A.6 above should be identical.

B. Document Handling at the Evidentiary Hearing

At the evidentiary hearing, the parties should present their documentary materials in the form specified below:

The Board will handle the admission of all direct and rebuttal witness testimony and any supporting exhibits relating to that testimony at the time the witness/witness panel associated with that testimony is sworn.

Assuming the versions provided via E-Filing are complete and correct, as was noted previously the parties need not provide any additional hard copies of their witnesses' prefilled testimony or supporting exhibits at the hearing. Although strongly discouraged, if a party sees a compelling need to make any revisions to the prefilled testimony or the supporting exhibits that were not submitted to the Board and the other parties prior to the hearing, consistent with the instructions in section A.4 supra regarding the submission of "ad hoc" materials, it must be prepared to provide that properly numbered revised testimony and/or supporting exhibit at the hearing session both electronically (in a PDF format that conforms to the agency's E-Filing

guidance) for electronic marking and in hard copy with a sufficient number of copies for counsel for the other parties, three copies for the Board members, and one copy for the Board's law clerk and to file that revised exhibit via the agency's E-Filing system after, but on the same day as, the revised exhibit is identified for the record.

The Board anticipates that prior to being admitted as an exhibit, prefilled direct and rebuttal testimony, which should be in question-and-answer format that, in the case of a witness panel, identifies the witness(es) sponsoring each answer, will be identified for the record by the sponsoring party and adopted by the witness/witnesses.

For other exhibits that have been prefilled via the agency's E-Filing system, when first seeking to have an exhibit identified (e.g., at the time a party is seeking to have the prefilled testimony that relies upon that exhibit admitted into the record), the sponsoring party should be prepared to provide orally a numeric listing of the exhibits at issue.

C. Miscellaneous Matters

1. Copies of Transcripts

The Board does not anticipate using overnight transcript service for this hearing. The Board will, however, request that each hearing session be transcribed within three business days.

2. Submission of Proposed Cross-Examination Questions

a. Pre-Hearing Proposed Questions. To maintain the confidentiality of each party's proposed cross-examination questions pending a Board initial decision, see 10 C.F.R. § 2.1207(a)(3)(iii), those questions should not be filed into the agency docket for this proceeding using the E-Filing system's "Public Submission" functionality. Instead, the proposed questions should be submitted directly to the Board by employing the E-Filing system's "In Camera Submission" functionality.

b. Proposed Questions Submitted during Ongoing Hearing. The Board contemplates breaking at appropriate intervals to allow the parties to compile and submit proposed examination questions based on the information the Board elicits during its questioning of a particular witness or witness panel. The parties should come to the hearing prepared logically to generate their proposed questions in a manner that will be both efficient (e.g., will not require extended breaks) and effective (e.g., decipherable by the Board).

3. Opening Statements by Counsel

To the extent the parties wish to do so, at the outset of the hearing the Board will afford one counsel for each of the parties making an evidentiary presentation a total of fifteen minutes to present a summary of that party's anticipated evidentiary presentations/proof relative to each of the contentions at issue during the September-October 2014 hearing session. The order of party opening statements will be the same as that specified in section A.1 above for party evidentiary presentations.

D. Limited Appearance Session

In conjunction with the evidentiary hearing, the Board will conduct a 10 C.F.R. § 2.315(a) oral limited appearance session on Sunday, September 28, 2014, from 3:00 p.m. to 6:00 p.m. Mountain Time at the Sundance Community Meeting Room, Crook County Courthouse Basement, 309 Cleveland St., Sundance, Wyoming. Each of the parties is invited to send one or more representatives to the meeting, who will be identified for the record. Further information regarding this session is provided in the Federal Register notice being issued this date. See Licensing Board Notice of Hearing (Notice of Evidentiary Hearing and Opportunity to Provide Oral and Written Limited Appearance Statements) (July 25, 2014).

E. Party Comments Regarding this Order

Any party comments regarding any aspect of this order should be filed on or before
Thursday, July 31, 2014.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

July 25, 2014

ATTACHMENT A

Submitted/Revised: Month, Day, Year

Strata Energy, Inc., Docket No. 40-9091-MLA
September-October 2014 Evidentiary Hearing on Environmental Issues
Hearing Exhibits

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
Strata Energy, Inc.) Docket No. 40-9091-MLA
(Ross In Situ Recovery Uranium Project))
(Materials License Application))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Providing Administrative Directives Associated with Evidentiary Hearing and Limited Appearance Session)** have been served upon the following persons by Electronic Information Exchange.

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**STRATA ENERGY, INC., Ross In Situ Recovery Uranium Project, Docket No. 40-9091-MLA
MEMORANDUM AND ORDER (Providing Administrative Directives Associated with
Evidentiary Hearing and Limited Appearance Session)**

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[Original signed by Brian Newell]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 25th day of July, 2014